

NORMAN MANLEY LAW SCHOOL
COUNCIL OF LEGAL EDUCATION

LEGAL EDUCATION CERTIFICATE
SECOND YEAR SUPPLEMENTARY EXAMINATIONS

CIVIL PROCEDURE AND PRACTICE II

(Wednesday, August 14, 1991)

Instructions to Students

- a) Time: 3 1/2 hours
 - b) Answer THREE questions from Part A and TWO questions from PART B
 - c) Questions selected from PART B must be answered on a separate sheet.
 - d) In answering any question a student may reply by reference to the Law of any Commonwealth Caribbean Territory, but must state at the beginning of the answer the name of the relevant territory.
 - e) It is unnecessary to transcribe the questions you attempt.
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PART A

Cecil.

QUESTION 1

State the purpose of and procedure on a Summons for Directions.

QUESTION 2

John Brady, a director of Fast Foods Limited, uses and keeps one of the Company's cars in the performance of his duties. On February 4, 1991, Alfred was awarded judgment in the sum of \$80,000 against Brady in a running down case brought against him by Alfred. On March 2, 1991 the marshall/bailiff levied execution on Brady's furniture to the extent of \$25,000, his electronic musical system valued at \$20,000, the motor car which he uses in his duties valued at \$40,000 and his sit-on lawn mower valued at \$7,000 which is on hire purchase from Lawn Supplies Ltd.

Fast Foods Ltd. and Lawn Supplies Ltd. claim that the marshall/bailiff has levied on their property. They wish to recover the car and the lawn mower which will be put up for sale within the next two days. They seek your advice.

Advise them on the relevant steps and procedure which may be taken and prosecuted to recover the property.

QUESTION 3

"A payment into Court is simply an offer to dispose of a claim on terms".

- a) Discuss
 - b) Draft a Notice of Payment into Court.
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QUESTION 4

State the cases in which it is appropriate to use an Originating Summons and describe the procedure on such user.

QUESTION 5

Write notes on:-

- a) fieri facias;
 - b) garnishee;
 - c) sequestration;
 - d) attachment;
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PART B

QUESTION 6

Give the procedural rules which govern legal proceedings by and against unincorporated associations.

QUESTION 7

State the main provisions of Order 102 of the Annual Practice (The White Book) of the Supreme Court of the United Kingdom, dealing with legal proceedings by and against incorporated associations.

QUESTION 8

Give the procedural steps for any THREE of the following:

- a) expulsion of a member from a Club;
 - b) distribution of profits to its shareholders by a company registered under the Companies Act;
 - c) "privatisation" of a government-owned bank;
 - d) formation of an Industrial Provident Society.
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QUESTION 9

The following document has been sent to you by instructing Attorney-at-law for vetting before it is filed in the Registry of the Supreme/High Court. Correct and re-draft this document.

"SUIT NO. C.L.J of 1991

IN THE SUPREME COURT OF JUDICATURE

IN COMMON LAW

BETWEEN	ANDREW JONES	PLAINTIFF
AND	SHART TURNER	RESPONDENT
AND	MICHAEL BROWN	RESPONDENT

THE HUMBLE PETITION OF ANDREW JONES SHEWETH:

1. That on the 6th day of January 1990, your Petitioner was induced by the first Respondent to invest his life savings of \$50,000 in FAST FOODS LTD. on the understanding that your Petitioner would be given:

- a) 20% of the shares of the said Company;
- b) a debenture with a floating charge on the assets of the Company to secure the remainder of \$40,000;
- c) the post of Co-managing Director.

2. That on the 7th day of January 1990, your Petitioner gave the first Respondent a cheque for the said sum of \$50,000 and she assured your Petitioner that she would see to it the matters set out above would be duly done.

3. That for the first year of the Company's operations your Petitioner and the first Respondent managed the affairs of the Company on the basis that the said matters were done and the Company made a profit of \$100,000.

4. That on the 28th day of December 1990, your Petitioner and the first Respondent had a quarrel over the appointment of one

MICHAEL BROWN the Second Respondent, as Maitre De.

5. That since then the affairs of the Company have been conducted in a manner oppressive to your Petitioner and the following facts have come to light:

- i) Your Petitioner's name has not been placed on the Register of Members;
- ii) on 7th January 1991 a share certificate for 50% of the shares has been issued to the second Respondent;
- iii) The locks on the doors of the Restaurant have been changed;
- iv) The Respondents have used all the profits of the Company to buy an apartment in their own names;
- v) The said debenture dated 7th August 1990 though duly executed, has not been registered.

WHEREFORE this Honourable Court will be moved for the following reliefs to put an end to the aforesaid oppressive conduct and to correct the state of affairs:

- i) The Register of the Members be rectified to indicate that your Petitioner is the holder of 20% of the shares;
- ii) The said debenture be registered;
- iii) The Respondents be declared a trustee of the said apartment for the Company.

DATED 11th March, 1991

TO the Registrar

Supreme Court, Kingston

AND TO the Respondents or their Attorneys-at-Law

FILED BY Jones & Jones, Attorney-at-Law for the Applicant.
